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ACT NO. XVI. OF 1853.

*Passed by the Governor General of India in Council on the
18th November 1853.*

An Act for amending the Law of Special Appeals.

I. Act No. III. of 1843 is hereby repealed, except as to cases in which a petition for appeal shall have been presented before this Act shall come into operation.

II. If any application for a special appeal shall have been presented, and no order shall have been passed thereon before this Act shall come into operation, such application shall be heard and determined in the same manner as an appeal presented under this Act; and all the provisions of this Act shall extend to such application and to the hearing thereof, and to all subsequent proceedings thereon; and also to the hearing and determination of the appeal if the same shall be admitted.

III. If any such application shall have been presented, and the appeal admitted before this Act shall come into operation, the appeal shall be heard and determined, in the same manner as if this Act had not been passed, except that the Sudder Courts shall determine the appeal without reference to the points certified, and may call for or refer to any
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part of the proceedings which may be necessary, and that the provisions of Section X. of this Act shall extend to such appeals.

IV. A special appeal shall lie to the Sudder Courts in the several Presidencies of Fort William in Bengal, Fort St. George and Bombay, from any decision passed on regular appeal in any of the Civil Courts subordinate to the said Sudder Courts respectively, on any of the following grounds, namely :

1st. On the ground that the decision hath failed to determine all material points in difference in the cause, or hath determined the same or any of them contrary to law or usage having the force of law.

2nd. On the ground of a misconstruction of any document.

3rd. On the ground of any ambiguity in the decision affecting the merits.

4th. On the ground of any substantial error or defect in procedure, or in the investigation of the case, provided such error or defect be apparent on the record, and shall have produced, or be likely to have produced, any error or defect in the decision of the case upon the merits. Provided always that no such special appeal shall lie, nor shall any such decision be reversed, altered, or remanded by any of the said Sudder Courts, upon the ground that the decision of any question of fact is contrary to or not warranted by the evidence duly taken in the cause, or any probability deduced from the record.

V. *Clause 1.*—A petition of special appeal may be presented in the Sudder Court, or it may be presented in the Court in which the decision objected to was passed for transmission to the Sudder Court. In either case the petition must be presented within three months from the date of the decision appealed against, unless the petitioner can show just and reasonable cause to the satisfaction of the Sudder Court for not having presented it within such limited period.

Clause 2.—Every such petition of special appeal shall be accompanied by authenticated copies of the decree objected to and of the decree of the Court of original jurisdiction. If the appeal be presented in the Court in which the decree objected to was passed, such last mentioned Court shall forthwith forward the same to the Sudder Court with an endorsement thereon of the date on which it was presented together

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with the copies of the decrees of the lower Courts by which it was accompanied.

Clause 3.—An application for an extension of the time for presenting a petition of special appeal may be made directly to the Sudder Court or through the intervention of the lower Court at the option of the applicant.

VI. Every petition for a special appeal shall set forth concisely and under distinct heads the grounds of objection to the decision appealed without any argument or narrative, and such grounds shall be numbered consecutively.

VII. *Clause 1.*—The Sudder Courts shall cause lists of the petitions which shall be presented for the admission of special appeals to be prepared weekly, and to be affixed in the Court-houses of the said Sudder Courts respectively. The said lists shall set forth the dates on which such petitions are likely to be brought on for hearing, and the said Sudder Courts shall cause extracts from the said lists to be transmitted to the Courts in which the decisions on regular appeal were passed; such extracts shall be affixed in some conspicuous place in the last mentioned Courts, and extracts therefrom shall be transmitted by such Courts to the Courts in which the original suits were instituted, and such last mentioned extracts shall be affixed in some conspicuous place in the said last mentioned Courts. The time to be fixed by the Sudder Court for the hearing of any petition shall not be less than six weeks from the date of despatch of the extracts referring to the same from the Sudder Court. The date of the despatch of each extract shall be notified thereon.

Clause 2.—At any time within the period of one month from the date of the despatch of the extract referring to the appeal, or within such further time as the Sudder Court shall for just and reasonable cause allow for that purpose, the respondent may present a separate petition of special appeal in the Sudder Court upon any of the grounds upon which a special appeal will lie against any part of the decision of the lower Court not involved in the appeal of the opposite party, provided the respondent shall not previously have presented a special appeal in the cause. Such petition however shall not be inserted in any list to be prepared in pursuance of Clause 1, Sec. VII. of this Act.

Clause 3.

Clause 3.—If the petition of appeal or the appeal of either party be dismissed, withdrawn or rejected, the application for appeal or the appeal, as the case may be, of the other party, shall be heard alone according to the provisions of this Act; otherwise, all applications for special appeal and all admitted special appeals relating to the same decision, shall respectively be heard together unless the Sudder Court shall otherwise order in any case.

VIII. *Clause 1.*—It shall be lawful for one or more of the Judges of the said Sudder Courts, respectively, to hear applications for special appeals, duly presented as aforesaid, in the presence of the appellant, or his pleader, and also of the respondent or his pleader or such of them as shall attend, and it shall be competent for such Judge or Judges to call for and peruse any document forming a part of the record of the cause; or to order the amendment of the petition of special appeal forthwith, or within such time as he or they may order, not exceeding one month from the date of such order; or to make an order of reference to the Court which pronounced the decree appealed from for further information or explanation; or to pass an order for admitting the appeal for hearing or for rejecting the same; or, if it shall appear that the facts have not been sufficiently recorded, or that the case is otherwise so insufficient that the Sudder Court could not, if the appeal were admitted, pass a final decree thereon, but for no other cause, to issue an injunction, setting forth the errors, irregularities, or other defects in the decision appealed against, and remanding the same to the Court by which the same shall have been passed, in order that such decision may be reviewed by the last mentioned Court, and that such order or decree may be passed thereon as shall be conformable to law. Provided always that no such remand shall be ordered as aforesaid, except upon grounds whereon a special appeal will lie under this Act. If any such application shall be heard by only two Judges, and they differ in opinion as to admitting the appeal for hearing, it shall be admitted.

Clause 2.—An order for admitting a special appeal for hearing shall specify, for the information of the Court, the grounds upon which it was admitted. But neither the Court nor the parties shall be confined to those grounds upon the hearing.

Clause 3.

Clause 3.—If an order be passed for admitting the special appeal for hearing, the case shall be brought on to the file of the Court to be heard and determined in due course.

Clause 4.—If an order for rejecting a special appeal or for remanding a case be made by one Judge only, such order shall not be final, but it shall be laid before another Judge of the same Court, who shall hear the application for the appeal in the presence of the appellant or his pleader and also of the respondent or his pleader or such of them as shall attend. If the second Judge be of opinion that the appeal ought to be rejected or the case remanded he shall pass a final order to that effect; if he be of opinion that the appeal ought to be admitted he shall pass an order for admitting the same, and the appeal shall thereupon be admitted, heard and determined in due course in the same manner as if it had been admitted in the first instance.

Clause 5.—A final order for remanding a case shall not be made without notice to the respondent to enable him to appear and be heard.

Clause 6.—Any Judge by whom an order for admitting a special appeal shall be made may certify that in his judgment the decision of the lower Court is manifestly erroneous upon any of the grounds upon which a special appeal will lie, and thereupon the appeal may be set down for hearing in a list to be called the list of certified special appeals. All cases entered in such list may be called up in due course for hearing and decision according to the provisions of this Act, without regard to the general list of special appeals pending in the Sudder Court.

Clause 7.—If an application for a special appeal be heard by a number of Judges sufficient according to the provisions of this Act to hear and determine the appeal, and it shall appear that the decision is manifestly erroneous, or that the case ought to be remanded, the appeal may be heard and determined forthwith, if the respondent or respondents be present or represented by a pleader or pleaders, otherwise the Court may order the case to be entered in the list of certified appeals, and the same shall be entered accordingly.

IX. *Clause 1.*—Every order for rejecting a special appeal shall state the reason for disallowing each of the grounds set forth in the petition, and every such order of rejection may be once reviewed by the Judge

Clause 3.

Judge or Judges by whom the same was passed, or by any Judge or Judges sitting for or instead of him or them, if they or he shall think fit to review the same. Provided that no such review shall be allowed unless application for the same be made within three months from the date of such order.

Clause 2.—If any such order be rescinded, or if the Judges who shall review the same shall be equally divided in opinion, the appeal shall be admitted and the case brought on to the file of the Court and heard and determined in due course.

Clause 3.—A petition for the review of such order shall be written on paper stamped with a Government stamp of the value of two Rupees a sheet.

X. *clause 1.*—When any special appeal shall be admitted, the same shall be heard and determined by three or more of the Judges of the Sudder Court, and such hearing and determination shall be upon all the grounds whereon a special appeal will lie under this Act.

Clause 2.—The Sudder Court may at any time before or at the time of the hearing of any special appeal or any application for a special appeal, allow either party to amend the grounds of objection set forth in his petition, or to add further grounds of objection thereto; or to urge and be heard by himself or his pleader in support of any objection not included in his petition, upon such terms and conditions as to postponement of the hearing, and as to the payment of costs or otherwise, as the Court shall think just, to prevent the opposite party or his pleader from being taken by surprise or otherwise. Without such leave of the Court, neither party shall be allowed to urge or be heard in support of any objection not set forth in his petition. But upon hearing the application or determining the appeal the Sudder Court shall not be confined to the grounds of objection set forth in the petition.

XI. The existing Laws and Regulations of the Presidencies of Bengal, Madras and Bombay, relating to special appeals, shall continue in force, in the said Presidencies respectively, so far as they are not inconsistent with, or repealed by, this Act.

GEO. PLOWDEN,
Offg. Secy. to the Govt. of India.

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